



SUBDIVISIONS **Development & Regulation**

**LOCAL GOVERNMENT
LAND USE EDUCATION PROGRAM**

**Center for Public Policy & Administration
University of Utah**

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Administration
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SUBDIVISIONS
DEVELOPMENT &
REGULATION

An Educational Handbook
For
Group Discussion

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SUBDIVISIONS

DEVELOPMENT AND REGULATION

BACKGROUND

The division of the land for the building of cities has been taking place through out the history of the United States. This is the process by which counties, cities and towns grow, consequently, planning commissions and city councils are charged by state statute with the development of comprehensive plans to give meaning to this growth. No local planning program can be complete without considering the regulations that can and should be used to manage the process of growth and land conversion.

The first locally enacted measures bearing on land subdivision grew out of plans adopted or referred to in early city charters shortly after the First Continental Congress of the United States. A principal ingredient that resulted from these city charters was a map of the street system prior to the division of tracts of land. Throughout the 19th Century, demand increased for formalized requirements for subdivisions. These demands progressed to local government processes for which subdivisions were accurately surveyed and platted and verified by a qualified engineer. The processes also required that the subdivision plat be approved by local officials and recorded prior to any sale of lots. Subdivision regulations became an important tool of city officials and planning officials in the 1920's. These were merely a new model of a very old device rather than a totally new method of land regulation. The Standard City Planning and Enabling Act was published by the U.S. Department of Commerce in 1928 made subdivision regulation a part of a comprehensive and continuing program of city planning, rather than a device used independently to achieve limited ends.

Subdivision regulations were adopted by many communities across the United States. Some communities initiated the use of subdivision regulations after World War II to take advantage of Federal GI and FHA programs to assist young married families to purchase homes.

Why do we regulate subdivisions?

An important motivation for adopting subdivision regulations was to protect both prospective home buyers and local government units from the practices of careless or unscrupulous developers.

Prior to the enactment of subdivision regulations, developers were bulldozing land and erecting homes, streets, roads and services without serious regard to potential problems of topography, soil conditions or proper placement of streets, sidewalks or curbs and gutters. The result was that unsuspecting home buyers purchased homes

that later developed severe problems, such as water in the basement, foundations that cracked from geologic hazards or failure of improper cuts and fills severe erosion and underground utility lines that decayed prematurely.

Often, in such cases, the local governments would be obligated to correct mistakes, at a higher cost, or provide the services that should have been provided initially by the developer. These costs had to be passed on to the individual homeowners through special assessments. Many of the original owners lost their homes because they were unable to afford the additional expenses. In other instances the community covered the costs through its general property tax, even though the majority of residents derived no benefit from the development.

It has been held by some courts that the recording of a plat is a privilege rather than a right. Therefore, after passing ordinances based on the state enabling statutes, a state or local unit of government may use its police power to establish various conditions and standards related to site development as a condition of approved for subdivisions. Without approval the subdivision cannot be legally recorded.

Subdivision regulations - a major influence on urban development

Subdivisions regulations influence significantly the shape of urban development. Urban planners and local officials have recognized that when large tracts of land have been carved up into streets, blocks and lots and publicly recorded, the pattern is difficult if not impossible to change without costly redevelopment programs.

The subdivision application process lends itself to close interaction and negotiation between the local officials and the prospective developer. Subdivision regulations have been broadened to include many standards related to urban development that are not contained in zoning ordinances.

It is essential that every jurisdiction develop, adopt, and implement subdivision regulations that are carefully conceived and that contain standards that are closely related and integrated with the community general plan. Such standards can be particularly effective for assuring proper implementation of the housing, density, transportation/circulation, and visual quality goals of the plan.

The subdivision application and approval process allows for close interaction and negotiation between local officials and the prospective subdivider. Subdivision regulations have been broadened in recent years to include many standards related to urban development that are not contained in most zoning ordinances.

Exclusionary Regulations

Care must be exercised to avoid standards that are so restrictive that they exclude certain income or socio-economic groups. There are zoning subdivision codes that have been designed purposefully to accomplish such exclusionary results. If standards are found to be exclusionary, they are subject to serious legal challenge and will likely be found to be unconstitutional - and invalidated.

ENABLING LEGISLATION

UTAH CODE

THE LAND USE DEVELOPMENT AND MANAGEMENT ACT

Title 10, Chapter 9, Cities and Towns

Title 17, Chapter 27, Counties

Definition of a Subdivision

The original Utah enabling act for municipalities had never included a definition of a subdivision. A later amendment established a definition that applied to subdivisions of three or more parcels. This definition was changed again in the 1991 Land Use Development and Management Act, which modified the definition to divisions into two or more parcels.

The LUDMA titles are identical with respect to the first subparagraph of the definition, the definition reads as follows:

(36) (a) "Subdivision" means any land that is divided, resubdivided or proposed to be

1. divided into two or more lots, parcels, sites, units, plots, or other division of land for the purpose, whether immediate or future, for offer, sale, lease, or development either on the installment plan or upon any and all other plans, terms, and conditions.

(b) "Subdivision" includes:

(i) the division or development of land whether by deed, metes and bounds description, devise and testacy, map, plat, or other recorded instrument; and

(ii) except as provided in Subsection (36)(c), divisions of land for residential and nonresidential uses, including land used or to be used for commercial, agricultural, and industrial purposes.

(c) "Subdivision" does not include:

(i) a bona fide division or partition of agricultural land for the purpose of joining one of the resulting separate parcels to a contiguous parcel of unsubdivided agricultural land, if neither the resulting combined parcel nor the parcel remaining from the division or partition violates an applicable land use ordinance;

(ii) a recorded agreement between owners of adjoining unsubdivided properties adjusting their mutual boundary if:

(A) no new lot is created; and

(B) the adjustment does not violate applicable land use ordinances;

(iii) a recorded document, executed by the owner of record:

(A) revising the legal description of more than one contiguous unsubdivided parcel of property into one legal description encompassing all such parcels of property; or

(B) joining a subdivided parcel of property to another parcel of property that has not been subdivided, if the joinder does not violate applicable land use ordinances; or

(iv) a recorded agreement between owners of adjoining subdivided properties adjusting their mutual boundary if:

(A) no new dwelling lot or housing unit will result from the adjustment; and

(B) the adjustment will not violate any applicable land use ordinance.

(d) The joining of a subdivided parcel of property to another parcel of property that has not been subdivided does not constitute a subdivision under this Subsection (36) as to the unsubdivided parcel of property or subject the unsubdivided parcel to the municipality's subdivision ordinance.

IT SHOULD BE NOTED, HOWEVER, by reviewing the text of Sections 10-9-103 and 17-17-103, and the definitions of Section 103, as reprinted in the Appendix of this handbook, the definitions beyond (a) and (b), shown above, bear significant distinctions. The primary distinction involves definitions of the purposes for which a division of land qualifies it for compliance with local subdivision regulations. Section 17 -27 -103 for counties, excludes a “bona fide division of land for or partition of agricultural land for agricultural purposes,” and certain agreements between landowners.

Adoption and Amendment of the Subdivision Ordinance

This sections of LUDMA related to subdivisions points out that the local government may enact a subdivision in order to implement the subdivision standards and provides for a review and approval process. The Act describes clearly the steps to adoption or amendment of the ordinances and the required public hearing. See Sections 10-9a-601, 602, 603, 604, 10-9a-207.

Submittal to the County Recorder - Recommendation of the Planning Commission

Sections 10-9a-604 and 17-7a-604 provide that a person may not submit a plat of a subdivision to the county recorder for recording unless a recommendation of the plat has been received from the planning commission. Sections 10-9a-611 and 17-27a-611 should be reviewed carefully. They are essentially the same but with some slight distinctions. These sections describe the legal implications if an owner of land transfers or sells any land in a subdivision before it has been approved and recorded.

Court Approval

Courts have sustained the constitutionality of subdivision regulation with a variety of dicta. Subdivision regulations are considered important for the maintenance of property tax records and land titles, and protects against questionable land marketing.

As a practical matter much subdivision regulation is treated as a bargaining process between the developer who needs certain city services and the city government that wishes high standards in development. Such bargaining rarely results in court actions.

SUBDIVISION REGULATIONS AND REQUIRED IMPROVEMENT

Subdivision regulations may differ in the type of improvements required and the design standards depending upon a number of factors such as:

- The size of the community,
- The extent and density of urbanization,
- The values of the community expressed in its general plan and other development policies, and
- The development concept of that the community has chosen to follow.

The subdivision regulations adopted by communities vary across the country, and among the cities and counties of Utah. Some of the more common subdivision standards are described below. The list is not exhaustive, but is provided as an overview.

Large and Small Subdivisions

The definition in the enabling legislation for a subdivision as any division of property into two or more lots has aroused concern for potential hardship. For several years, some local ordinances have provided for a simplified approval process for subdivisions of ten lots or less. This size distinction has resulted in a common practice of including definitions of two types of subdivisions-large and small

Sections 10-9a-605 and 17 - 17a - 605, provide for an exemption from the recording of a plat, and sale by metes and bounds description, for subdivisions of less than ten lots, with a proviso of planning commission approval. Upon meeting prerequisites in section 10 - 9a- 605 and 17 - 27a- 605.

The major reason for this difference in treatment is the cost to the subdivider of providing all the information that is normally required. Complying with all the standards also becomes costly for developers of small subdivisions to remain competitive with the larger developers. Caution should be exercised when relaxing the requirements for information and design standards for smaller subdivisions, however, in order to insure that the overall purpose of the regulations is not subverted.

The economic limitations of the small subdividers are a matter for concern, but such concern should not influence regulation to the point of threatening public health and safety. For this reason, the following are some of the improvements that should be required by ordinance to be provided by all subdividers.

Monuments - The type, specification and location of survey monuments within the subdivision.

Streets and alley - The type, width, and survey required for streets and alleys within the subdivision.

Curb and gutter - The type and dimension of curb and gutter required for adequate storm water run-off.

Sidewalks - The type, dimensions and location of sidewalks.

Water supply - The type and standards for water wells and placement of water wells in relation to sewer systems and/or septic tanks. Ordinances should also indicate under what conditions a subdivider may be required to connect to a municipal water system (if one exists). It also may require periodic testing of wells. The applicant will generally show the water distribution system, its adequacy, the means that shall be used for its proper maintenance and the location of necessary right-of-way easements.

Sewage disposal - There should be standards for septic tanks and drain fields and the placement of sewage disposal systems in relation to water wells. The ordinance may require every subdivision to have a connection to a sanitary sewage facility that has capacity for collection, treatment and export of such sewage or treatment plants required by the governmental entities involved. If approval is required of the system where trunk lines are not available then a requirement may be necessary for a percolation test for each lot to determine if the septic tank and drain field operate properly. Seepage pits may be prohibited or severely restricted.

It should be noted that some ordinances require connection to a sewer system if the development is within 300 feet of an existing sewer line. Otherwise, a septic tank and drainfield system may be approved by the county health department upon the successful compliance with the applicable development standards.

Storm water drainage - This refers to the type of storm water drainage system required. This should include storm drainage and culverts, the size of culvert, and other requirements. Accurate mapping of all storm drainage easements may be required, especially in the event that the subdivision, or any part of it is traversed by any major water course channel, stream or creek, gulch or any other natural channel. Adequate easements for storm drainage purposes should be provided.

Street lighting - The specifications and placement of street lights.

Public utilities - The placement of utilities such as gas and electric lines.

Land for parks and open space - Many communities require the developer to dedicate a certain amount of land or cash in lieu of land for open space, recreation or other public purposes.

Other regulations and provisions - Some municipalities include provisions in their ordinances for oversized water supplies, sewage disposal, and storm drainage lines. The authority issuing the permit may require that the applicant construct lines of a size larger than normally required to service the subdivision in question where such facilities will be necessary to accommodate water, sewer, or storm water runoff requirements in future develop able areas beyond the subdivision site.

One reason for encouraging the dedication or provision of larger lines is that by erecting homes a developer brings new people into the community and thereby creates demands upon the community in excess of that which the community is currently experiencing. If a community uses such provisions, the use of long range planning as a means of staging the city capital improvement costs is a necessity so as not to create excessive costs for the current developer.

Subdivision Design Standards

Design standards provide the specific guidelines for the design of the physical improvements in the subdivision. Standards are developed for the purpose of protecting public health and safety, preserving natural resources, and achieving community aesthetic goals. There are typically three distinct types of provisions in subdivision design which relate to the setting in which a subdivision is to be placed and its coordination with the area where it is located:

First

There may be a prohibition against any subdivision activity in areas of highly sensitive environment, such as lands with high water table, floodplain, soil or subsoil instability, wetlands, or areas of excessive slope.

Second

There should be requirements that the proposed subdivision be in compliance with the applicable general plan. Of particular importance would be the areas that are preserved for future streets, rights-of-way, parks, schools or key recreation sites, and the preservation of areas for major utility lines.

Third

There should be a series of requirements designed to assure that the proposed subdivision will be coordinated with abutting properties with respect to street connections and utility lines, drainage facilities and perhaps reservations for open spaces or a park system.

As has been discussed, these requirements for coordination with other subdivisions in the immediate area and for future development may necessitate the sizing of utility lines to carry a capacity beyond what would normally be needed for the subdivision being considered.

STREETS

Functional Classification (Review the diagram on page 10)

Generally, a municipal or county subdivision ordinance will establish the functional classification of the streets that serve the community. The functional classification establishes the purpose and function of all streets and describes each as to whether it is a freeway, major or minor arterial, a major or minor collector, or a local street. This classification allows the application of standards for such features as right-of-way widths, intersection designs, maximum allowable grades, maximum speed limits, and others. Most local jurisdictions maintain their own manual of engineering standards which guide street design and construction. This information is generally included as part of the community's master street plan, or official map.

Street Design

The importance of streets as an element in the design of a subdivision cannot be over emphasized. Streets serve a variety of important functions. As the basic circulation network of the city, streets move both pedestrians and vehicles and generally impose the greatest influence on the design of blocks and lots than any other functional system in the subdivision. Other purposes for the street rights of way include accommodation of transmission and utility lines such as water, sewer, gas, electric and telephone systems. Street rights of way occupy large amounts of land area – sometimes as much as 20 to 25 percent of the total land area of a subdivision. That land consumption can be reduced by design that relies upon clustering of dwellings.

Subdivision design should be reviewed and coordinated with the community master street plan. Subdivisions must relate to one another to assure a system of connecting streets for maximum pedestrian as well as vehicular movement. This is especially important for access by emergency vehicles.

Stub Streets

It is essential to the accomplishment of effective street circulation that the design for every subdivision assure that its street system will allow access to abutting properties. Diagrams on pages 13 and 17 show stubs to abutting properties (or the need for one). This practice also precludes the possibility of creating landlocked parcels.

Street Names and Numbers

Another aspect of street design and layout that should be reviewed carefully is the naming and numbering of streets and resulting addresses. The ease of locating streets and addresses for emergency calls or postal and service delivery is incumbent upon rational street numbering and naming. Curved streets that require east-west numbers to switch to north-south numbers along the same street can cause considerable confusion.

Public Safety

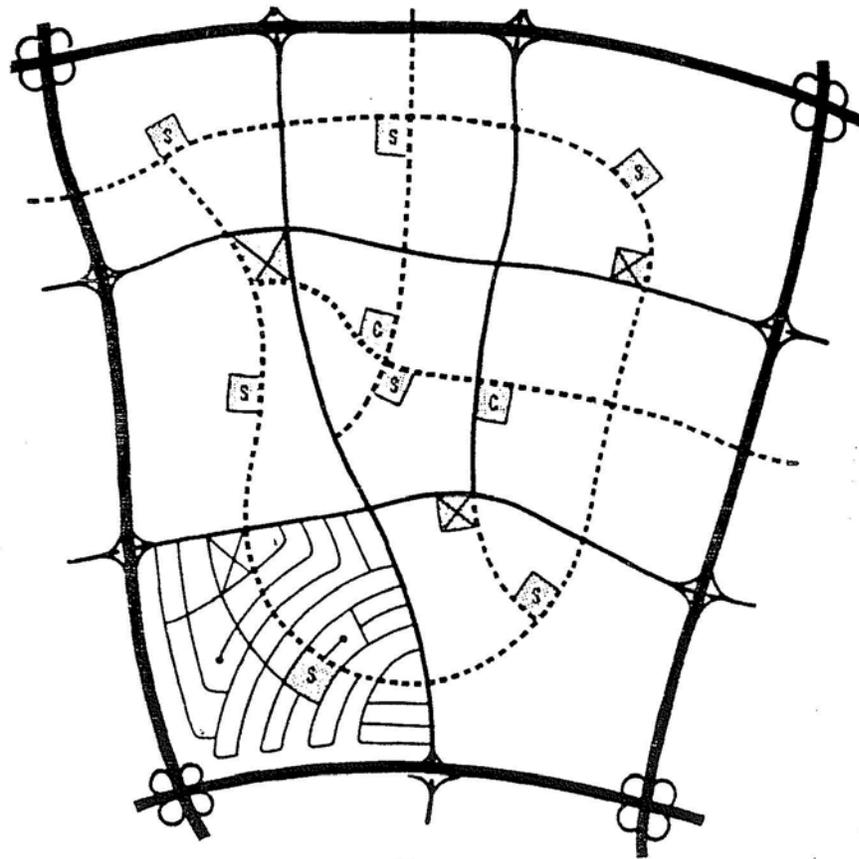
The approval process should include consideration for emergency and snow-removal vehicle access – street grades and turn-around capacity.

Traffic Calming

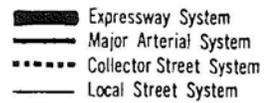
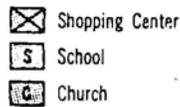
The Envision Utah publication, *Urban Planning Tools for Community Growth*, provides excellent guidelines for design of residential streets to assure pedestrian scale and safety. The term “traffic calming” refers to the inclusion of regulatory and design concepts and devices in street rights of way that will slow traffic speed and volumes.

Regulatory measures to slow traffic concentrate on speed limits and signage. Street design can include roundabouts and highly visible pedestrian crossings. Devices such as speed bumps and medians can contribute to slowing traffic. Subdividers should be made aware of the community’s desire to reduce the impact of vehicular traffic while achieving an efficient circulation system.

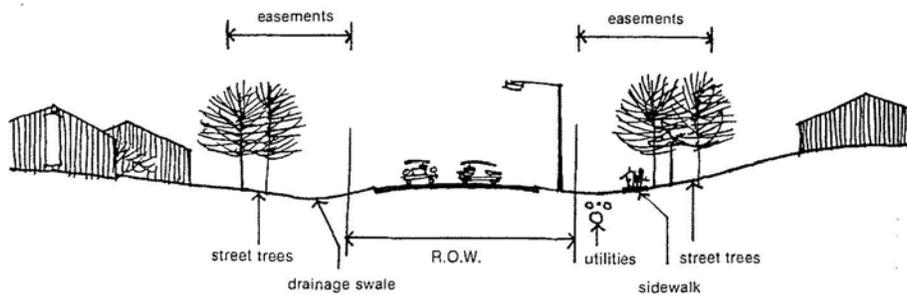
FUNCTIONAL CLASSIFICATION



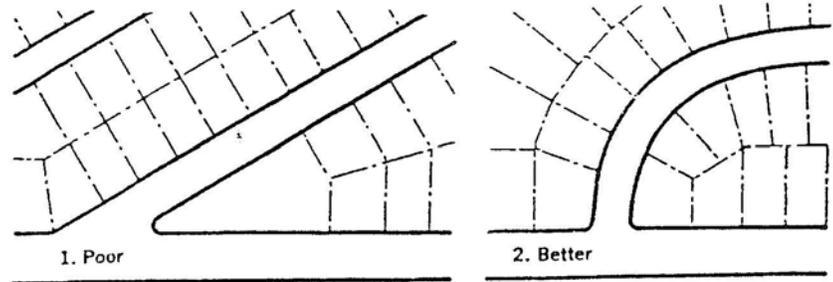
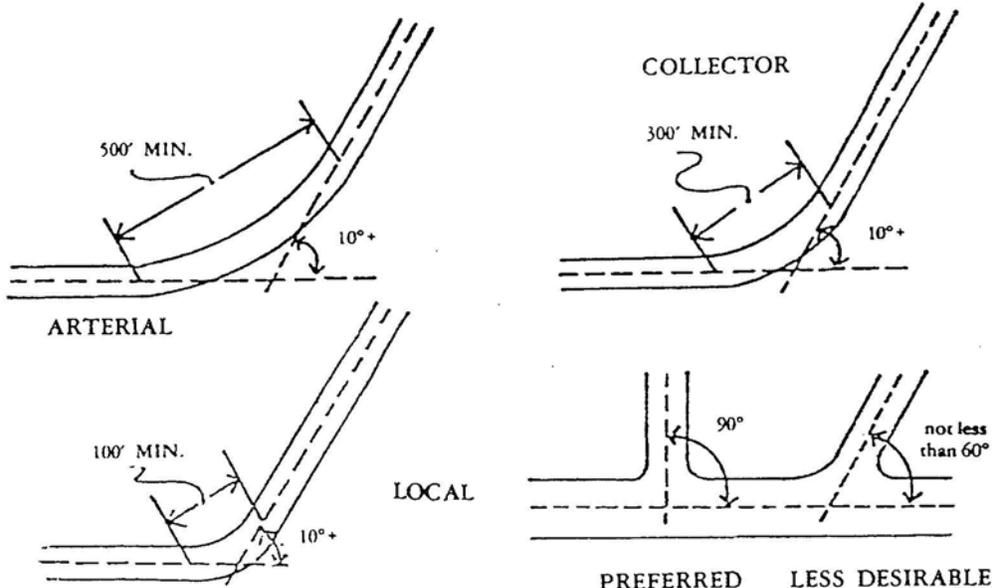
LEGEND



Subdivision layout and design should conform to the Master Street plan of the local jurisdiction. The Master Street Plan includes the functional classification of all streets and standards for street design.

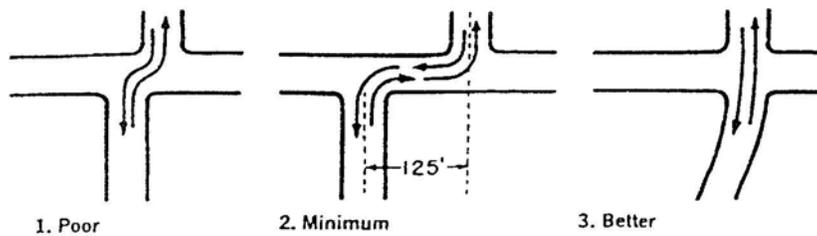


STREET DESIGN RECOMMENDATIONS



Hazardous angle intersection, creating awkward turning movements.

Better approach illustrates the use of right-angle intersections.



The dangerous jog intersection forcing precarious turning movements.

Intersections which cannot be aligned should be separated by a minimum of 125 feet between centerlines.

By slightly curving one of the unaligned intersecting streets, a dangerous jog can be avoided.

Lot Design

Another important element of subdivision design is the lot layout. Lot design generally relies upon the talent of the subdivision designer to assure that the subdivision contributes to the beauty of the community. Careful study of the lot design related to topography and other natural features can contribute to livability and property value. Where lots are larger there is more flexibility in the location of structures and design of lots, but good lotting should by no means be overlooked in smaller or more dense developments. Qualities to seek in lot layouts as determined by lot design:

- ✓ Each lot should have a favorable site for placing the house without requiring excessive grading, footings or foundation walls. Each lot should have sufficient buildable area.
- ✓ There should be space for outdoor living and/or recreation with front and rear yards vegetation.
- ✓ Adequate surface drainage away from the house location should be provided, with slopes generally toward the street or to the rear. There should be reasonable grade for garage and driveway approaches from the street.
- ✓ Retention of substantial natural vegetation should be encouraged, especially of specimen trees.

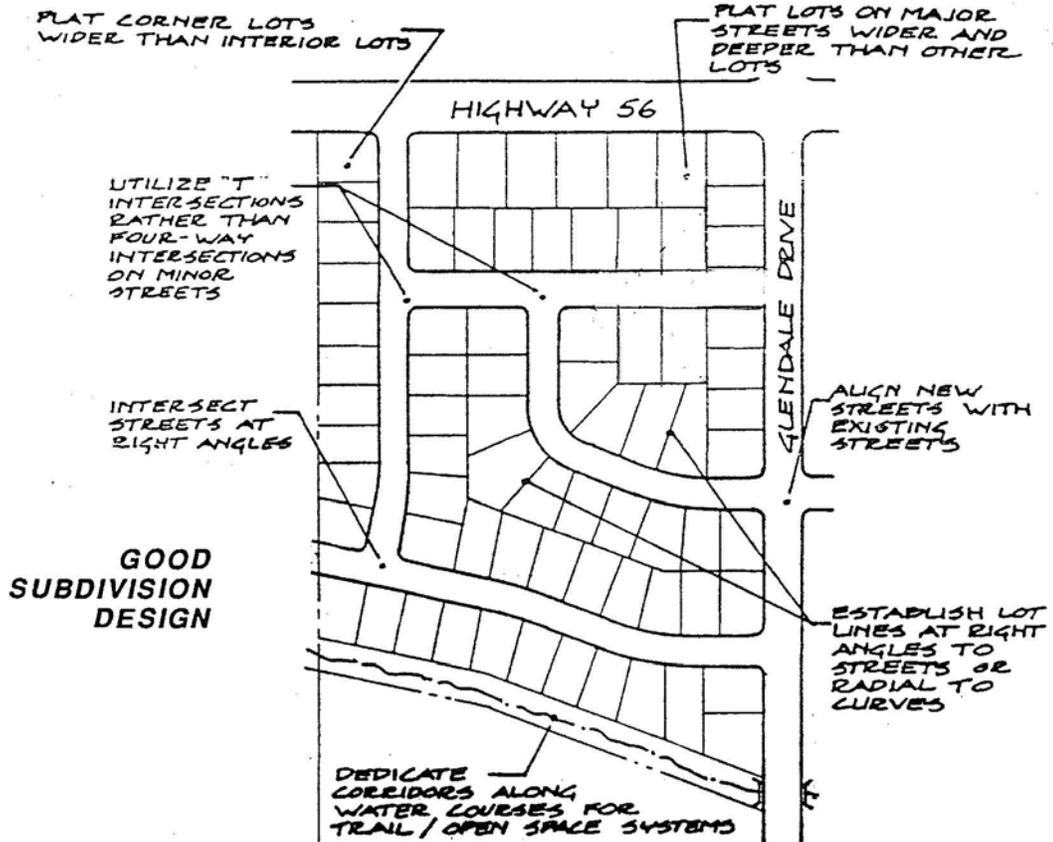
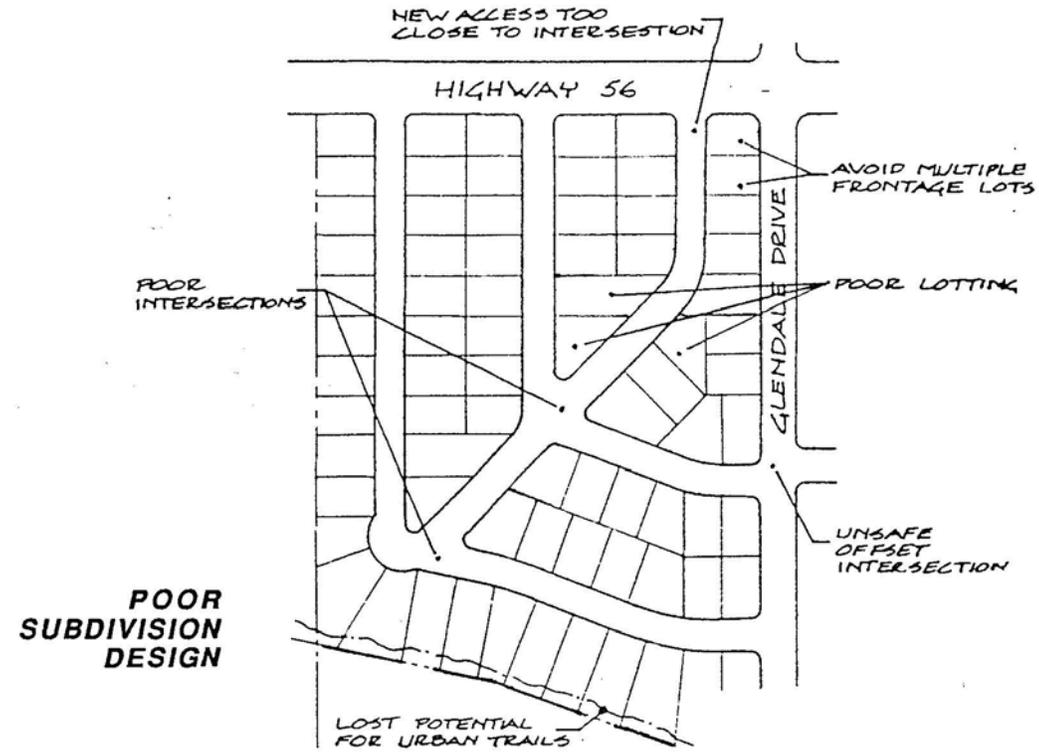
Block Design and Arrangement - Connectivity

In those years when most subdivision design was based on a rigid 90 degree angle grid, specifications as to block lengths and widths were quite important. Given the preference for greater flexibility in subdivision design, however, block requirements primarily refer to the intervals with which streets must be provided in order to facilitate access from one area to another – thus, “connectivity.”

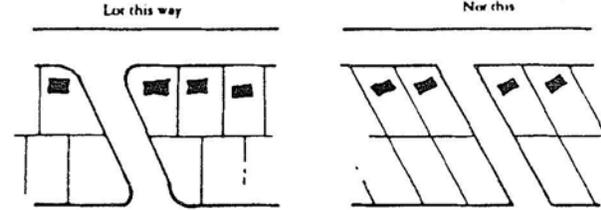
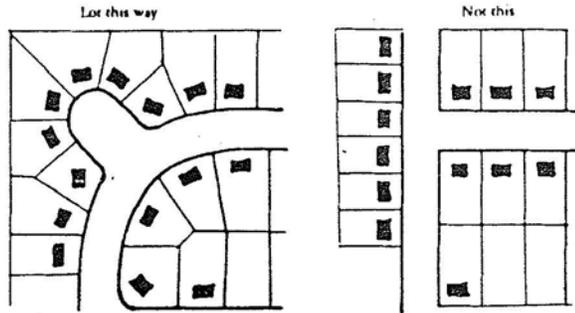
It is recommended to specify that blocks be limited to 600 to 800 feet in length, though slightly longer blocks, may be acceptable under certain conditions. The key objective is to assure convenient pedestrian access to facilities such as schools, parks, and commercial nodes.

Sewage Disposal

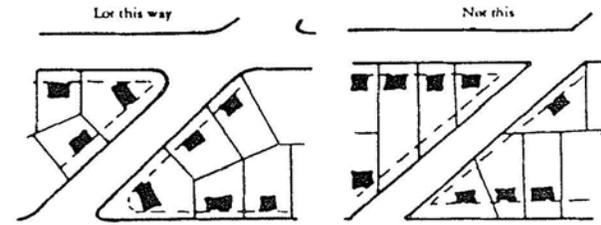
Most subdivision ordinances will specify the size, material and location of septic tanks and drain fields or require the approval of the district engineer or city engineer for connection to a public sewage system. Where septic tanks are used, the county health department or State Department of Health must give final approval of the design and installation. Lots in single-family subdivisions where individual septic tanks are to be used for sewage disposal should be at least one half acre in size.



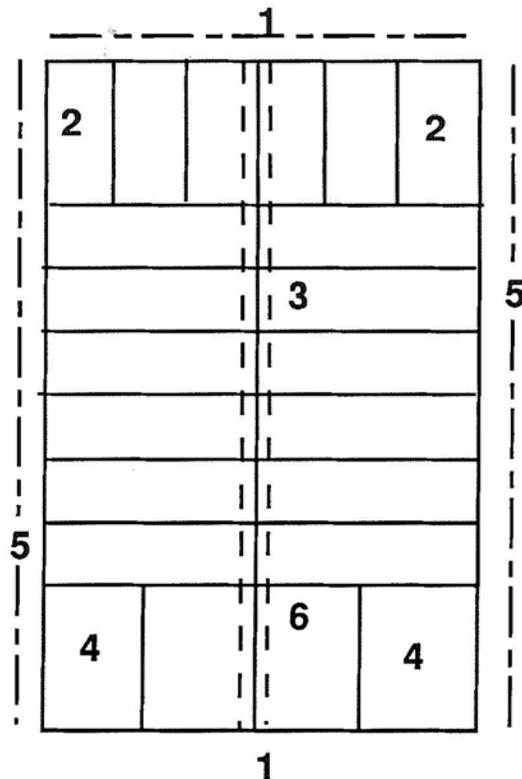
Drawings courtesy of the West Valley City Community Development Department



When existing intersecting streets form acute angled intersections



Suggestions for Lot Design.
Some common mistakes in subdivision lot design can create awkwardly-shaped lots and traffic circulation problems.



MORE LOT DESIGN

1. Small butt lots require more underground utilities at the end of the block.
2. Corner lots are too narrow.
3. Rear utility easement unless power lines are installed in the street.
4. These corner lots are larger to allow for more desirable sideyards.
5. Street overhead and underground utilities are preferred.
6. Butt lots with property lines in the center allow for better access to utility easement.

Culinary Water Systems

Size and location of pumping systems used for serving culinary and pressure irrigation systems for homes should be described by the ordinance. If wells are allowed, the methods of sealing the sidewalls of the water wells to avoid pollution problems should be addressed. The developer should show the intended distribution system and its adequacy, the means proposed to be used for its proper future maintenance and the approximate location of necessary easements.

Storm Drainage

The plans submitted by the developer should contain information describing the existing watercourse channels or drainage tiles for storm sewer and culverts and other works pertaining to drainage or flood control. The description should include the natural flows and additional run-off that will be generated by the subdivision when it is completely developed.

In areas without piped storm sewer systems, or in areas where it is impractical to connect to existing storm water sewers, storm water retention through the use of catch basins may be necessary. This is especially important where development is on a hillside. The developer should be required to show the proposed method of on-site retention on the subdivision plan. Retention may be achieved through the use of sumps in the streets and retention basins or reservoirs.

Parks and Open Space

The size and type of open space dedication required of developers (or amount of in-lieu contribution) and the location of the land for different types of parks will vary depending upon the size of the development, the physical setting and the special needs of the future residents. Communities near a national forest or other vast natural area need an entirely different recreation and open space plan than communities in an urbanized setting. Design standards and open space requirements should reflect local conditions and needs in order to assure adequate space and desired recreation opportunities.

A table should be provided in the ordinance by which to estimate the number of acres to be reserved for park and recreation purposes – such as three acres of recreation area for every one hundred dwelling units. The standards might relate the percentage of total land for recreation to the size of the lots, viz., the smaller the lots, the greater the percentage of land reserved for parks. The developer should be required to dedicate all recreation areas to the local government as a condition of final subdivision plat approval. In planned unit developments, however, recreation spaces may be controlled and maintained by a homeowner's association.

Erosion and sediment control

Subdivision planning requirements should make adequate provision to insure prevention of soil erosion by exposing the minimum area possible during

construction and covering bare soil with good vegetation as soon as possible after construction. Prior to the granting of preliminary approval of the subdivision plat, the subdivider should submit a description of the methods to be employed to dispose of soil and other materials when they are removed from the site.

A schedule showing when each stage of the project will be completed including total area of soil surface which is to be disturbed during each stage, and the estimated start and completion dates, is usually required prior to giving approval to the subdivision development plan.

Slope/density and capability control – Development on Sensitive Lands

Slope/density data are provided as a means by which to assess suitable development density for sensitive lands. As slope increases so does the potential for environmental degradation, including slope failure, erosion, sedimentation, run-off and other potential hazards. Of major concern is the slippage and erosion of soils that may consequently endanger the homes that stand in the way of natural drainage. Pollution of ground water is also a serious problem. Septic tanks may be disallowed because drain fields generally require a gently sloping area. Serious consideration should be granted to the maximum grade of streets and driveways in areas of extreme slope.

Before any subdivision is approved, the reviewing agency must be capable of assuring that the area proposed for development is safe and free of potential natural hazards. Any jurisdiction should identify on accurate maps areas of potential hazard from earthquake, flood, landslide, rockfall, high water table, etc.

REVIEW AND APPROVAL PROCESS

The following are steps and requirements generally used for the administration of the application of a subdivision – this procedure is not established by law.

STEP ONE – PRE-APPLICATION (CONCEPT) REVIEW

A developer and his staff or consultants meet with the planning staff and/or planning commission to present the concept of the proposed development or subdivision. A sketch plan is adequate for illustrating the concept at this step in the approval process.

The accompanying drawing shows a typical sketch plan and the type of information that should be included with the plan. The primary purpose of concept review is to inform the local staff and officials of the developer's proposal and also to provide an opportunity for officials to inform the developer of the appropriate ordinances and standards. If this meeting is conducted in the spirit of cooperation, it can help to avoid many future problems and misunderstandings. Unfortunately, and in too many instances, this meeting is never held and the

developer goes to the expense of preparing a preliminary plat for a meeting with the staff and the officials.

In some cases, this pre-application review step may be unsatisfactory because the planning staff may not believe it can give any commitments to the developer that will be binding upon the planning commission. If both parties are thoroughly aware of this, however, there can still be a helpful exchange of information at this stage, and an involvement or discussion with the planning commission will follow.

The pre-application meeting can also draw attention to ordinances or regulations administered by other agencies, within the jurisdiction or nearby. For example, the proposed subdivision may include a floodplain wetlands, earthquake zone, or other sensitive or hazardous natural features.

STEP TWO – PRELIMINARY REVIEW AND APPROVAL

This step following staff review has traditionally been called preliminary, but may be given a name that emphasizes that it is this review and approval step during which all design changes must be made and approved. Some ordinances identify this step as the “Development Design Review and Approval,” or something similar. The point with regard to the name is that it should be abundantly clear that this step in the three-step approval process is the most important step. It is at this stage that the standards and the regulations are applied and where the most significant interaction takes place between the developer, the planning commission and the staff.

The subdivision plat must be submitted in sufficient time and with an adequate number of copies to provide for review and recommendations by various departments and agencies, such as the city or county engineer, the local school district, the recreation committee, the public works department, the health department, and the police and fire departments. Appropriate public utility companies should also be included in the preliminary review.

Recommendations and comments submitted by these agencies should be received by the planning commission prior to any hearings on the proposed plan or meeting at which preliminary approval is expected. Most ordinances authorize the planning commission to grant or deny approval of a preliminary plat. There will often be considerable negotiation and discussion between the developer and the planning commission resulting in mutually agreed modifications in the plat or conditions of the approval. Some regulations provide for an appeal to the governing body from the decision made at this time.

It should be understood – when the Preliminary Review and Approval (or whatever it’s called) is signed off by the planning commission and legislative body, the developer is vested and has a project.

Preliminary plat requirements

The plat of the proposed subdivision presented for preliminary review and approval should include the following information:

- ▶ Name of owner and proof of ownership of the development parcel.
- ▶ Name of land surveyor, engineer and site planner and certificate as to the accuracy of the plat.
- ▶ Identification and legal description of the subdivision.
- ▶ Approved name of the subdivision.
- ▶ Location by section, township and range.
- ▶ Dimensions and bearings of all property boundaries.
- ▶ Layout and dimensions of all proposed lots.
- ▶ Existing Structures.
- ▶ Vicinity map, at a specified scale, showing all logs and streets in the subdivision and all abutting streets and public rights of way.
- ▶ High water marks of all lakes, rivers, streams and location of any designated wet lands – all known potential natural hazards.
- ▶ Location of prominent natural features such as rock outcroppings, woodlands, steep slopes.
- ▶ Location and dimensions of existing and proposed utilities and utility easements.
- ▶ Grading and drainage plans, including all proposed changes in grade.
- ▶ Existing and finished contours at intervals of at least 5 feet.
- ▶ Existing sanitary sewers, storm drains, water supply mains and culverts within the subdivision or within 100 feet thereof.
- ▶ Existing and proposed storm water drainage system, including drainage easements.
- ▶ Location, width, and other dimensions of proposed streets, alleys, easements, parks, and other open spaces to be dedicated to the public,

with complete description.

- ▶ Proposed on-site and off-site water facilities, sanitary sewers, storm drain facilities and fire hydrants.
- ▶ Soil erosion and sediment control plan, including trees and other vegetation proposed to be planted.
- ▶ Landscaping plan for any public or commons areas.
- ▶ Proposed street lighting.
- ▶ Proposed zoning changes, if any are needed or recommended.
- ▶ Graphic scale.
- ▶ North arrow.
- ▶ Date of preparation.
- ▶ Abstract of title or registered property certificate.

In many cases, the preliminary plat may consist of a series of maps with detailed information on each map. As an example, it may include a site plan, a grading plan, a utilities plan, a drainage area plan, a planting plan and a map indicating street profiles and grades. This provides the local government with substantial information by which to evaluate the subdivision proposal. Local officials should insist that the prospective developers provide this type of information as part of the preliminary plat.

→ (A sample Preliminary Plat Map appears on page 24)

STEP THREE – FINAL PLAT REVIEW

When the preliminary plat has been approved, the developer should prepare an appropriate number of copies of the final plat, as specified by the subdivision ordinance. The ordinance should assure that the final plat is of a form and size which meets the requirements of the county recorder's office.

The ordinance should require the subdivider's engineer to submit the final plat, with any changes or modification as presented for the preliminary review and approval. This is accompanied by a letter of certification that all lots meet the requirements of the zoning ordinance.

The filing of the final plat serves at least two functions: First, it may constitute a

legal dedication to the public of the streets, parks, utility easements and similar lands shown on the plat. Secondly, the certificate of dedication, as attached to the plat, becomes a convenient means for describing a particular lot which the developer may wish to deed to a purchaser.

After the staff and planning commission have reviewed and approved the final plat, it is sent to the local governing body for review and then registered with the county recorder. Many subdivision regulations also require that the subdivider substantially begin the project within one year or approval will be revoked and the entire review process must be repeated.

Final plat requirements.

The final plat should include the following information:

- ▶ Subdivision name and location.
- ▶ Description of land to be included in the subdivision.
- ▶ Accurately drawn boundaries with proper bearing and dimensions of all properties within the subdivision.
- ▶ Graphic Scale.
- ▶ North Arrow.
- ▶ Date of plat.
- ▶ Name, address, signature of subdivider.
- ▶ Dimensions and bearing of boundary lines of property.
- ▶ Location of right-of-way.
- ▶ Widths and names of existing and proposed streets and sidewalks.
- ▶ Location and widths of existing and proposed utility and drainage easements.
- ▶ Location and names of existing and proposed parks and other open space with accurate lot line dimensions.
- ▶ Lot numbers.
- ▶ Location description and size of monuments.

- ▶ Location of rivers, lakes, streams, and swamps and known high water marks.
- ▶ Restrictive covenants, the legal certifications by the proper local officials (usually the chief elected official and the planning commission chairman) and statement of dedication, dedicating all streets for public use that are not private streets. Legal certification should include certificate of acceptance by the local government, attested by the city or county recorder.
- ▶ Preliminary Title Report.
- ▶ Public Improvement Agreement.
- ▶ Owner's Certificate of Dedication.
- (A sample Final Plat Map appears on page 25)

FINANCIAL GUARANTEES FOR PROJECT COMPLETION

One of the serious problems that has faced communities is finding a method to insure that the developer will provide all the required improvements. This is particularly a concern if the developer should file bankruptcy before construction is complete. Several methods have been found for insuring that the needed improvements will be provided and that the community will not be left with the cost of providing the defaulted improvements.

Four common tools available to assure performance are: surety bond, escrow bond, cash bond and an irrevocable letter of credit. The letter of credit is attractive because a bank will issue a letter confirming that it will back the holder of the letter for the amount of the bond without the funds actually deposited in an escrow account. For an escrow bond the developer is required to deposit in an escrow account the amount of money necessary to finish the improvements.

Other performance bonds are established at the estimated cost of providing the necessary improvements plus an added amount to anticipate inflation, e.g., 125 percent. If the developer fails to provide the necessary improvements, the local government can collect the funds from the firm posting the bond to finish the improvements.

Another method is the covenant and agreement contract entered into by the subdivider and the local government. The contract agreement places a lien on the property to guarantee the installation of the required improvements. The subdivider must furnish proof of title and agree to acceptance of prior right of the agreement over any mortgage that may be outstanding on the land being

subdivided.

From a procedural point of view, it is important that the local government require the developer to post the performance bond, furnish proof of an escrow deposit in favor of the local government or enter into a lien agreement before approval is given to the final plat. Otherwise the developer may refuse to guarantee the installation and quality of the required improvements, because approval has already been granted.

Of the three methods of securing assurance for the installation of the required improvements, the use of a performance bond with an escalator clause to take care of increased costs due to inflation is probably preferred from the point of view of the administering local government. The performance bond provides for the easiest method of collection in the event of unfinished improvements or a need to replace utilities or facilities.

PLANNING REVIEW AND INSPECTION FEES

In addition to the need for requiring financial assurance that improvements will be put in place, local governments must require the developer to pay reasonable subdivision processing, plan checking and inspection fees, just as they pay building permit fees.

The fees charged should cover the actual cost of providing the planning review services rendered as part of the approval process and the cost of engineering inspection services during actual construction. There is no reason for the community to pay for an engineer's time to take core samples of compacted material for a street or slump test of concrete being used on a subdivider's project. Subdividing and developing land is a profitable business and the local government should not subsidize the subdivider by having these services provided or made available at no cost.

IMPACT FEES (EXACTIONS)

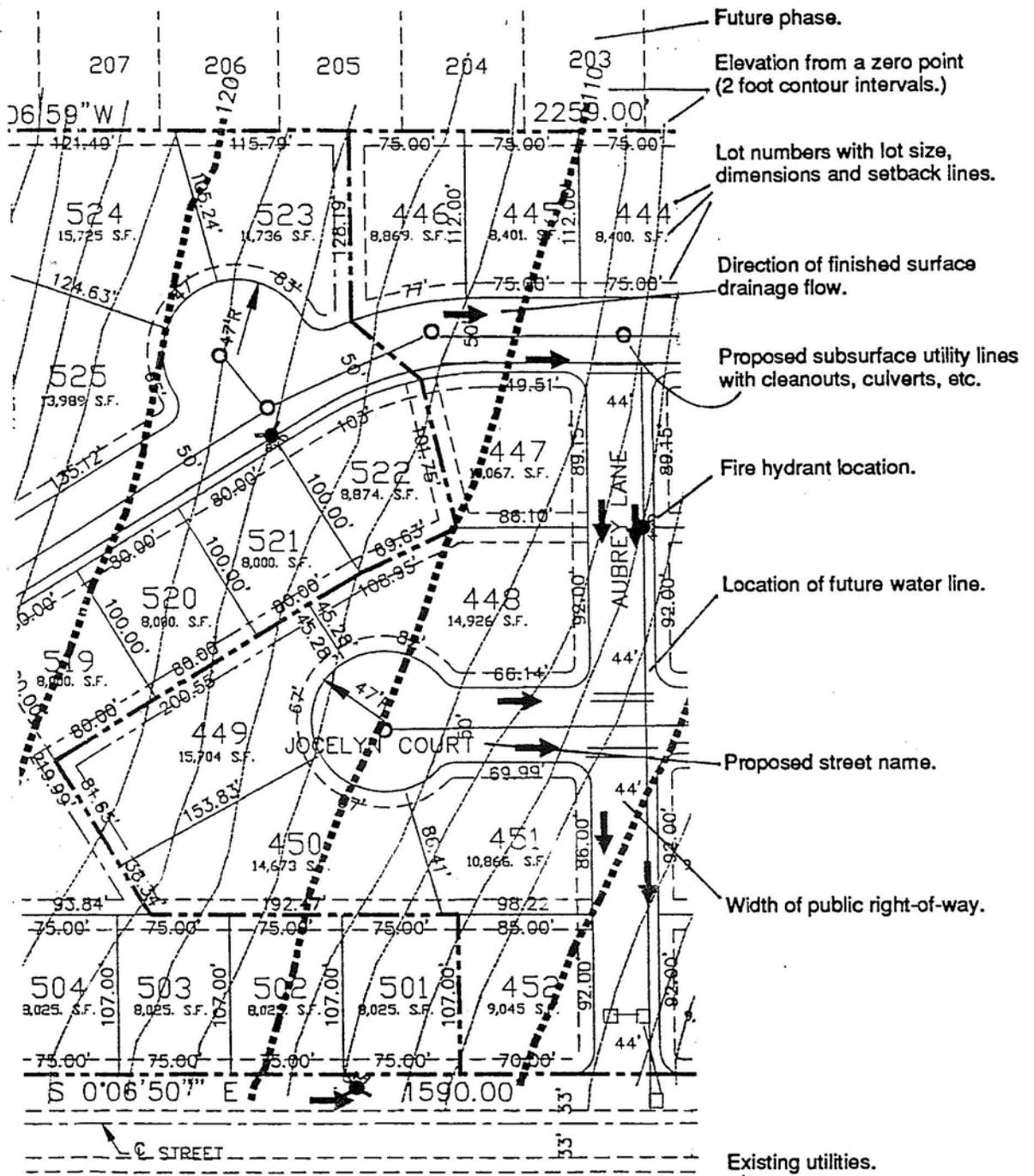
During the turbulent growth period of the 1970's, communities throughout Utah and the rest of the country experienced considerable difficulty in generating the revenues necessary to provide needed public services to the new growth areas. Many local officials realized that it was politically unpopular to exact higher fees or taxes to pay for facilities needed only to serve residents of the new developments. In an effort to accelerate the access to revenue, and to augment the inevitable shortfall, many local governments imposed fees or exactions on new development, as it occurred.

Exactions have been imposed for many years as a dedication of land for both on-

site and off-site improvements, including parks and schools. Direct fees have also been sought to cover costs of water or sewer connections. Exactions have been imposed also for other public needs such as new roads or improvements to existing streets, storm sewers, schools, or a fire station.

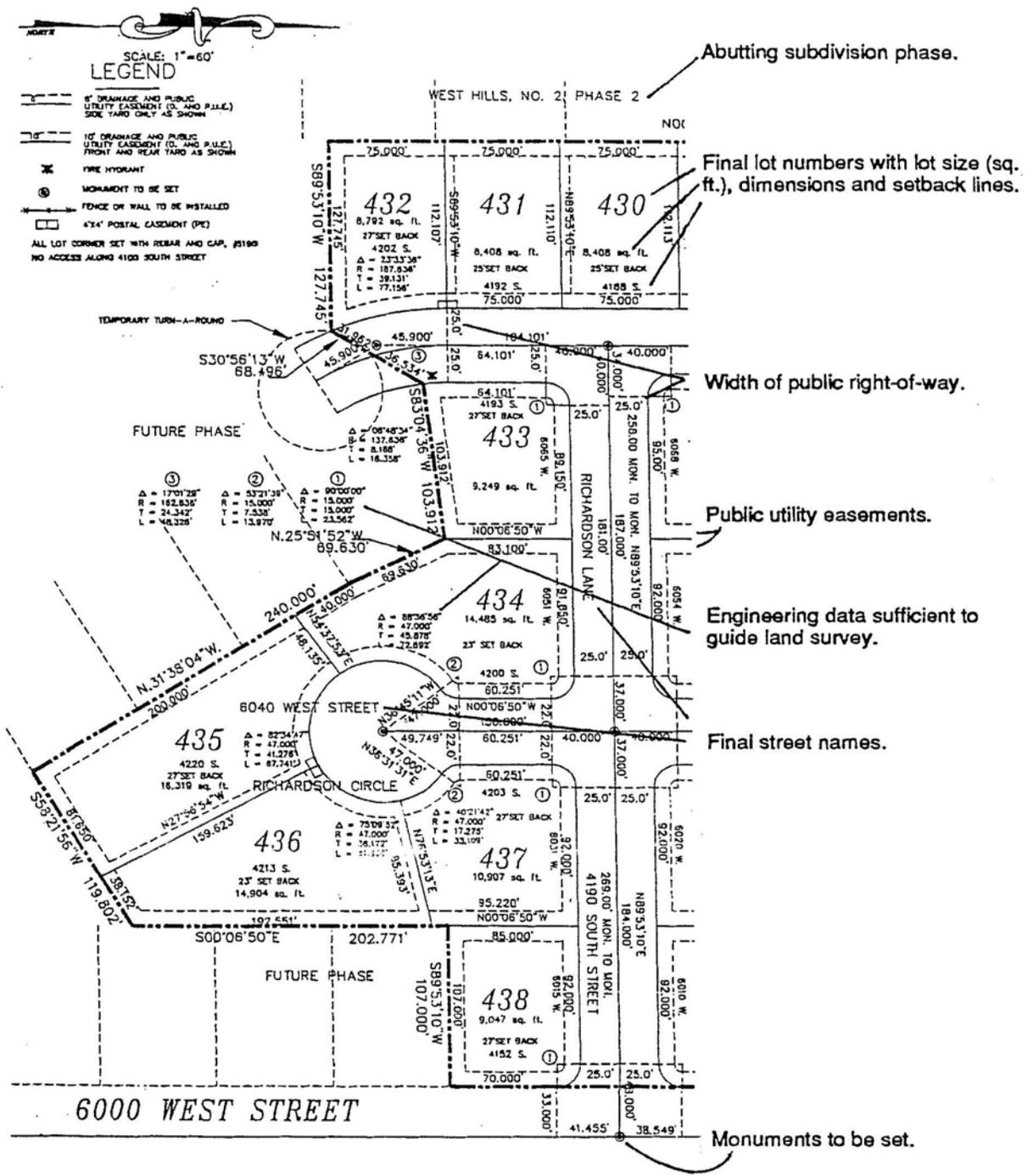
As the practice evolved, the impact fee has become most generally a cash payment made by the developer prior to issuance of a building permit. The amount of the fee is based upon a formula that estimates the impact that the development will impose upon various public facilities.

In several states, including Utah, impact fees have been challenged in court and a series of decisions, including a U.S. Supreme Court case, and a Utah Supreme Court case, have helped to establish legal precedent for the imposition of impact fees. The critical legal point that has emerged from litigation is referred to as the "rational nexus test." The test is imposed to assure that the fee exacted is earmarked for improvements that relate directly to the development area from which the fee was collected. Courts have also been concerned that the local government that is imposing the fee requirement possesses the legal authority to do so.



Partial View of a Preliminary Plat

This plat was generated by the computer-assisted Auto CADD mapping program. Most plats and plans produced by professional engineers and architects are computer-generated.



Partial View of a Final Plat

The preliminary and final plats shown here follow requirements of the West Valley City Community Development Dept.; submitted by Watt Utah, Inc.; produced by Eckhoff, Watson & Preator Engineering.

Utah Code -- Title 10 -- Chapter 09a -- Municipal Land Use, Development, and Management

10-9a-103. Definitions.

As used in this chapter:

- (1) "Affected entity" means a county, municipality, independent special district under Title 17A, Chapter 2, Independent Special Districts, local district under Title 17B, Chapter 2, Local Districts, school district, interlocal cooperation entity established under Title 11, Chapter 13, Interlocal Cooperation Act, specified public utility, a property owner, a property owners association, or the Utah Department of Transportation, if:
 - (a) the entity's services or facilities are likely to require expansion or significant modification because of an intended use of land;
 - (b) the entity has filed with the municipality a copy of the entity's general or long-range plan; or
 - (c) the entity has filed with the municipality a request for notice during the same calendar year and before the municipality provides notice to an affected entity in compliance with a requirement imposed under this chapter.
- (2) "Appeal authority" means the person, board, commission, agency, or other body designated by ordinance to decide an appeal of a decision of a land use application or a variance.
- (3) "Billboard" means a freestanding ground sign located on industrial, commercial, or residential property if the sign is designed or intended to direct attention to a business, product, or service that is not sold, offered, or existing on the property where the sign is located.
- (4) "Charter school" includes:
 - (a) an operating charter school;
 - (b) a charter school applicant that has its application approved by a chartering entity in accordance with Title 53A, Chapter 1a, Part 5, The Utah Charter Schools Act; and
 - (c) an entity who is working on behalf of a charter school or approved charter applicant to develop or construct a charter school building.
- (5) "Chief executive officer" means the:
 - (a) mayor in municipalities operating under all forms of municipal government except the council-manager form; or
 - (b) city manager in municipalities operating under the council-manager form of municipal government.
- (6) "Conditional use" means a land use that, because of its unique characteristics or potential impact on the municipality, surrounding neighbors, or adjacent land uses, may not be compatible in some areas or may be compatible only if certain conditions are required that mitigate or eliminate the detrimental impacts.
- (7) "Constitutional taking" means a governmental action that results in a taking of private property so that compensation to the owner of the property is required by the:
 - (a) Fifth or Fourteenth Amendment of the Constitution of the United States; or
 - (b) Utah Constitution Article I, Section 22.
- (8) "Culinary water authority" means the department, agency, or public entity with responsibility to review and approve the feasibility of the culinary water system and sources for the subject property.
- (9) (a) "Disability" means a physical or mental impairment that substantially limits one or more of a person's major life activities, including a person having a record of such an impairment or being regarded as having such an impairment.
 - (b) "Disability" does not include current illegal use of, or addiction to, any federally controlled substance, as defined in Section 102 of the Controlled Substances Act, 21 U.S.C. 802.
- (10) "Elderly person" means a person who is 60 years old or older, who desires or needs to live with other elderly persons in a group setting, but who is capable of living independently.
- (11) "General plan" means a document that a municipality adopts that sets forth general guidelines for proposed future development of the land within the municipality.
- (12) "Identical plans" means building plans submitted to a municipality that are substantially identical to building plans that were previously submitted to and reviewed and approved by the municipality and describe a building that is:
 - (a) located on land zoned the same as the land on which the building described in the previously approved plans is located; and

(b) subject to the same geological and meteorological conditions and the same law as the building described in the previously approved plans.

(13) "Land use application" means an application required by a municipality's land use ordinance.

(14) "Land use authority" means a person, board, commission, agency, or other body designated by the local legislative body to act upon a land use application.

(15) "Land use ordinance" means a planning, zoning, development, or subdivision ordinance of the municipality, but does not include the general plan.

(16) "Land use permit" means a permit issued by a land use authority.

(17) "Legislative body" means the municipal council.

(18) "Lot line adjustment" means the relocation of the property boundary line in a subdivision between two adjoining lots with the consent of the owners of record.

(19) "Moderate income housing" means housing occupied or reserved for occupancy by households with a gross household income equal to or less than 80% of the median gross income for households of the same size in the county in which the city is located.

(20) "Nominal fee" means a fee that reasonably reimburses a municipality only for time spent and expenses incurred in:

(a) verifying that building plans are identical plans; and

(b) reviewing and approving those minor aspects of identical plans that differ from the previously reviewed and approved building plans.

(21) "Noncomplying structure" means a structure that:

(a) legally existed before its current land use designation; and

(b) because of one or more subsequent land use ordinance changes, does not conform to the setback, height restrictions, or other regulations, excluding those regulations, which govern the use of land.

(22) "Nonconforming use" means a use of land that:

(a) legally existed before its current land use designation;

(b) has been maintained continuously since the time the land use ordinance governing the land changed; and

(c) because of one or more subsequent land use ordinance changes, does not conform to the regulations that now govern the use of the land.

(23) "Official map" means a map drawn by municipal authorities and recorded in a county recorder's office that:

(a) shows actual and proposed rights-of-way, centerline alignments, and setbacks for highways and other transportation facilities;

(b) provides a basis for restricting development in designated rights-of-way or between designated setbacks to allow the government authorities time to purchase or otherwise reserve the land; and

(c) has been adopted as an element of the municipality's general plan.

(24) "Person" means an individual, corporation, partnership, organization, association, trust, governmental agency, or any other legal entity.

(25) "Plan for moderate income housing" means a written document adopted by a city legislative body that includes:

(a) an estimate of the existing supply of moderate income housing located within the city;

(b) an estimate of the need for moderate income housing in the city for the next five years as revised biennially;

(c) a survey of total residential land use;

(d) an evaluation of how existing land uses and zones affect opportunities for moderate income housing; and

(e) a description of the city's program to encourage an adequate supply of moderate income housing.

(26) "Plat" means a map or other graphical representation of lands being laid out and prepared in accordance with Section **10-9a-603**, **17-23-17**, or **57-8-13**.

(27) "Public hearing" means a hearing at which members of the public are provided a reasonable opportunity to comment on the subject of the hearing.

(28) "Public meeting" means a meeting that is required to be open to the public under Title 52, Chapter 4, Open and Public Meetings Act.

(29) "Record of survey map" means a map of a survey of land prepared in accordance with Section **17-**

23-17.

(30) "Residential facility for elderly persons" means a single-family or multiple-family dwelling unit that meets the requirements of Section **10-9a-516**, but does not include a health care facility as defined by Section **26-21-2**.

(31) "Residential facility for persons with a disability" means a residence:

(a) in which more than one person with a disability resides; and

(b) (i) is licensed or certified by the Department of Human Services under Title 62A, Chapter 2, Licensure of Programs and Facilities; or

(ii) is licensed or certified by the Department of Health under Title 26, Chapter 21, Health Care Facility Licensing and Inspection Act.

(32) "Sanitary sewer authority" means the department, agency, or public entity with responsibility to review and approve the feasibility of sanitary sewer services or onsite wastewater systems.

(33) "Special district" means an entity established under the authority of Title 17A, Special Districts, and any other governmental or quasi-governmental entity that is not a county, municipality, school district, or unit of the state.

(34) "Specified public utility" means an electrical corporation, gas corporation, or telephone corporation, as those terms are defined in Section **54-2-1**.

(35) "Street" means a public right-of-way, including a highway, avenue, boulevard, parkway, road, lane, walk, alley, viaduct, subway, tunnel, bridge, public easement, or other way.

(36) (a) "Subdivision" means any land that is divided, resubdivided or proposed to be

divided into two or more lots, parcels, sites, units, plots, or other division of land for the purpose, whether immediate or future, for offer, sale, lease, or development either on the installment plan or upon any and all other plans, terms, and conditions.

(b) "Subdivision" includes:

(i) the division or development of land whether by deed, metes and bounds description, devise and testacy, map, plat, or other recorded instrument; and

(ii) except as provided in Subsection (36)(c), divisions of land for residential and nonresidential uses, including land used or to be used for commercial, agricultural, and industrial purposes.

(c) "Subdivision" does not include:

(i) a bona fide division or partition of agricultural land for the purpose of joining one of the resulting separate parcels to a contiguous parcel of unsubdivided agricultural land, if neither the resulting combined parcel nor the parcel remaining from the division or partition violates an applicable land use ordinance;

(ii) a recorded agreement between owners of adjoining unsubdivided properties adjusting their mutual boundary if:

(A) no new lot is created; and

(B) the adjustment does not violate applicable land use ordinances;

(iii) a recorded document, executed by the owner of record:

(A) revising the legal description of more than one contiguous unsubdivided parcel of property into one legal description encompassing all such parcels of property; or

(B) joining a subdivided parcel of property to another parcel of property that has not been subdivided, if the joinder does not violate applicable land use ordinances; or

(iv) a recorded agreement between owners of adjoining subdivided properties adjusting their mutual boundary if:

(A) no new dwelling lot or housing unit will result from the adjustment; and

(B) the adjustment will not violate any applicable land use ordinance.

(d) The joining of a subdivided parcel of property to another parcel of property that has not been subdivided does not constitute a subdivision under this Subsection (36) as to the unsubdivided parcel of property or subject the unsubdivided parcel to the municipality's subdivision ordinance.

(37) "Unincorporated" means the area outside of the incorporated area of a city or town.

(38) "Zoning map" means a map, adopted as part of a land use ordinance, that depicts land use zones, overlays, or districts.

10-9a-601. Enactment of subdivision ordinance.

(1) The legislative body of a municipality may enact ordinances requiring that a subdivision plat comply

with the provisions of the ordinance and this part before:

- (a) it may be filed or recorded in the county recorder's office; and
- (b) lots may be sold.

(2) If the legislative body fails to enact a subdivision ordinance, the municipality may regulate subdivisions only to the extent provided in this part.

10-9a-602. Planning commission preparation and recommendation of subdivision ordinance -- Adoption or rejection by legislative body.

(1) The planning commission shall:

- (a) prepare and recommend a proposed ordinance to the legislative body that regulates the subdivision of land;
- (b) prepare and recommend or consider and recommend a proposed ordinance that amends the regulation of the subdivision of the land in the municipality;
- (c) provide notice consistent with Section **10-9a-205**; and
- (d) hold a public hearing on the proposed ordinance before making its final recommendation to the legislative body.

(2) The municipal legislative body may adopt or reject the ordinance either as proposed by the planning commission or after making any revision the legislative body considers appropriate.

10-9a-603. Plat required when land is subdivided -- Approval of plat -- Recording plat.

(1) Unless exempt under Section **10-9a-605** or excluded from the definition of subdivision under Subsection **10-9a-103**(36), whenever any land is laid out and platted, the owner of the land shall provide an accurate plat that describes or specifies:

- (a) a name or designation of the subdivision that is distinct from any plat already recorded in the county recorder's office;
- (b) the boundaries, course, and dimensions of all of the parcels of ground divided, by their boundaries, course, and extent, whether the owner proposes that any parcel of ground is intended to be used as a street or for any other public use, and whether any such area is reserved or proposed for dedication for a public purpose;
- (c) the lot or unit reference, block or building reference, street or site address, street name or coordinate address, acreage or square footage for all parcels, units, or lots, and length and width of the blocks and lots intended for sale; and
- (d) every existing right-of-way and easement grant of record for underground facilities, as defined in Section **54-8a-2**, and for other utility facilities.

(2) Subject to Subsections (3), (4), and (5), if the plat conforms to the municipality's ordinances and this part and has been approved by the culinary water authority and the sanitary sewer authority, the municipality shall approve the plat.

(3) The municipality may withhold an otherwise valid plat approval until the owner of the land provides the legislative body with a tax clearance indicating that all taxes, interest, and penalties owing on the land have been paid.

(4) (a) The owner of the land shall acknowledge the plat before an officer authorized by law to take the acknowledgement of conveyances of real estate and shall obtain the signature of each individual designated by the municipality.

(b) The surveyor making the plat shall certify that the surveyor:

- (i) holds a license in accordance with Title 58, Chapter 22, Professional Engineers and Professional Land Surveyors Licensing Act;
 - (ii) has completed a survey of the property described on the plat in accordance with Section **17-23-17** and has verified all measurements; and
 - (iii) has placed monuments as represented on the plat.
- (c) As applicable, the owner or operator of the underground and utility facilities shall approve the:
- (i) boundary, course, dimensions, and intended use of the right-of-way and easement grants of record;
 - (ii) location of existing underground and utility facilities; and
 - (iii) conditions or restrictions governing the location of the facilities within the right-of-way, and easement grants of records, and utility facilities within the subdivision.

(5) (a) After the plat has been acknowledged, certified, and approved, the owner of the land shall, within the time period designated by ordinance, record the plat in the county recorder's office in the county in

which the lands platted and laid out are situated.

(b) An owner's failure to record a plat within the time period designated by ordinance renders the plat voidable.

10-9a-604. Subdivision plat approval procedure -- Effect of not complying.

(1) (a) A person may not submit a subdivision plat to the county recorder's office for recording unless:

(i) except as provided in Subsection (1)(b), a recommendation has been received from the planning commission;

(ii) the plat has been approved by:

(A) the land use authority of the municipality in which the land described in the plat is located; and

(B) other officers that the municipality designates in its ordinance; and

(iii) all approvals are entered in writing on the plat by the designated officers.

(b) Subsection (1)(a) does not apply if the planning commission is the land use authority.

(2) A subdivision plat recorded without the signatures required under this section is void.

(3) A transfer of land pursuant to a void plat is voidable.

10-9a-605. Exemptions from plat requirement.

(1) Notwithstanding Sections **10-9a-603** and **10-9a-604**, the land use authority may approve a subdivision of ten lots or less without a plat, by certifying in writing that:

(a) the municipality has provided notice as required by ordinance; and

(b) the proposed subdivision:

(i) is not traversed by the mapped lines of a proposed street as shown in the general plan and does not require the dedication of any land for street or other public purposes;

(ii) has been approved by the culinary water authority and the sanitary sewer authority;

(iii) is located in a zoned area; and

(iv) conforms to all applicable land use ordinances or has properly received a variance from the requirements of an otherwise conflicting and applicable land use ordinance.

(2) (a) Subject to Subsection (1), a lot or parcel resulting from a division of agricultural land is exempt from the plat requirements of Section **10-9a-603** if the lot or parcel:

(i) qualifies as land in agricultural use under Section **59-2-502**;

(ii) meets the minimum size requirement of applicable land use ordinances; and

(iii) is not used and will not be used for any nonagricultural purpose.

(b) The boundaries of each lot or parcel exempted under Subsection (1) shall be graphically illustrated on a record of survey map that, after receiving the same approvals as are required for a plat under Section **10-9a-604**, shall be recorded with the county recorder.

(c) If a lot or parcel exempted under Subsection (2)(a) is used for a nonagricultural purpose, the municipality may require the lot or parcel to comply with the requirements of Section **10-9a-603**.

(3) (a) Documents recorded in the county recorder's office that divide property by a metes and bounds description do not create an approved subdivision allowed by this part unless the land use authority's certificate of written approval required by Subsection (1) is attached to the document.

(b) The absence of the certificate or written approval required by Subsection (1) does not affect the validity of a recorded document.

(c) A document which does not meet the requirements of Subsection (1) may be corrected by the recording of an affidavit to which the required certificate or written approval is attached in accordance with Section **57-3-106**.

10-9a-606. Common area parcels on a plat -- No separate ownership -- Ownership interest equally divided among other parcels on plat and included in description of other parcels.

(1) A parcel designated as common area on a plat recorded in compliance with this part may not be separately owned or conveyed independent of the other parcels created by the plat.

(2) The ownership interest in a parcel described in Subsection (1) shall:

(a) for purposes of assessment, be divided equally among all parcels created by the plat, unless a different division of interest for assessment purposes is indicated on the plat or an accompanying recorded document; and

(b) be considered to be included in the description of each instrument describing a parcel on the plat by its identifying plat number, even if the common area interest is not explicitly stated in the instrument.

10-9a-607. Dedication of streets and other public places.

(1) Plats, when made, acknowledged, and recorded according to the procedures specified in this part, operate as a dedication of all streets and other public places, and vest the fee of those parcels of land in the municipality for the public for the uses named or intended in those plats.

(2) The dedication established by this section does not impose liability upon the municipality for streets and other public places that are dedicated in this manner but are unimproved.

10-9a-608. Vacating or changing a subdivision plat.

(1) (a) Subject to Section **10-9a-609.5**, and provided that notice has been given pursuant to local ordinance and Section **10-9a-208**, the land use authority may, with or without a petition, consider and resolve any proposed vacation, alteration, or amendment of a subdivision plat, any portion of a subdivision plat, or any lot contained in a subdivision plat.

(b) If a petition is filed, the land use authority shall hold a public hearing within 45 days after the petition is filed or, if applicable, within 45 days after receipt of the planning commission's recommendation under Subsection (2), if:

(i) any owner within the plat notifies the municipality of their objection in writing within ten days of mailed notification; or

(ii) a public hearing is required because all of the owners in the subdivision have not signed the revised plat.

(2) (a) (i) The planning commission shall consider and provide a recommendation for a proposed vacation, alteration, or amendment under Subsection (1)(a) before the land use authority takes final action.

(ii) The planning commission shall give its recommendation within 30 days after the proposed vacation, alteration, or amendment is referred to it, or as that time period is extended by agreement with the applicant.

(b) Subsection (2)(a) does not apply if the planning commission has been designated as the land use authority.

(3) The public hearing requirement of Subsection (1)(b) does not apply and a land use authority may consider at a public meeting an owner's petition to alter a subdivision plat if:

(a) the petition seeks to join two or more of the owner's contiguous, residential lots; and

(b) notice has been given pursuant to local ordinance.

(4) Each request to vacate or alter a street or alley, contained in a petition to vacate, alter, or amend a subdivision plat, is also subject to Section **10-9a-609.5**.

(5) Any fee owner, as shown on the last county assessment rolls, of land within the subdivision that has been laid out and platted as provided in this part may, in writing, petition to have the plat, any portion of it, or any street or lot contained in it, vacated, altered, or amended as provided in this section and Section **10-9a-609.5**.

(6) Each petition to vacate, alter, or amend an entire plat, a portion of a plat, or a street or lot contained in a plat shall include:

(a) the name and address of all owners of record of the land contained in the entire plat;

(b) the name and address of all owners of record of land adjacent to any street that is proposed to be vacated, altered, or amended; and

(c) the signature of each of these owners who consents to the petition.

(7) (a) The owners of record of adjacent parcels that are described by either a metes and bounds description or a recorded plat may exchange title to portions of those parcels if the exchange of title is approved by the land use authority in accordance with Subsection (7)(b).

(b) The land use authority shall approve an exchange of title under Subsection (7)(a) if the exchange of title will not result in a violation of any land use ordinance.

(c) If an exchange of title is approved under Subsection (7)(b):

(i) a notice of approval shall be recorded in the office of the county recorder which:

(A) is executed by each owner included in the exchange and by the land use authority;

(B) contains an acknowledgment for each party executing the notice in accordance with

the provisions of Title 57, Chapter 2a, Recognition of Acknowledgments Act; and

(C) recites the descriptions of both the original parcels and the parcels created by the exchange of title; and

(ii) a conveyance of title reflecting the approved change shall be recorded in the office of the county recorder.

(d) A notice of approval recorded under this Subsection (7) does not act as a conveyance of title to real property and is not required for the recording of a document purporting to convey title to real property.

(8) (a) The name of a recorded subdivision may be changed by recording an amended plat making that change, as provided in this section and subject to Subsection (8)(c).

(b) The surveyor preparing the amended plat shall certify that the surveyor:

(i) holds a license in accordance with Title 58, Chapter 22, Professional Engineers and Professional Land Surveyors Licensing Act;

(ii) has completed a survey of the property described on the plat in accordance with Section 17-23-17 and has verified all measurements; and

(iii) has placed monuments as represented on the plat.

(c) An owner of land may not submit for recording an amended plat that gives the subdivision described in the amended plat the same name as a subdivision in a plat already recorded in the county recorder's office.

(d) Except as provided in Subsection (8)(a), the recording of a declaration or other document that purports to change the name of a recorded plat is voidable.

10-9a-609. Land use authority consideration of petition to vacate or change a plat -- Criteria for vacating or changing a plat -- Recording the vacation or change.

(1) If the land use authority is satisfied that the public interest will not be materially injured by the proposed vacation, alteration, or amendment, and that there is good cause for the vacation, alteration, or amendment, the land use authority may vacate, alter, or amend the plat or any portion of the plat, subject to Section 10-9a-609.5.

(2) The land use authority may approve the vacation, alteration, or amendment by signing an amended plat showing the vacation, alteration, or amendment.

(3) The land use authority shall ensure that the amended plat showing the vacation, alteration, or amendment is recorded in the office of the county recorder in which the land is located.

(4) If an entire subdivision is vacated, the legislative body shall ensure that a legislative body resolution containing a legal description of the entire vacated subdivision is recorded in the county recorder's office.

10-9a-609.5. Vacating or altering a street or alley.

(1) (a) If a petition is submitted containing a request to vacate or alter any portion of a street or alley within a subdivision:

(i) the land use authority shall, after providing notice pursuant to local ordinance and Section 10-9a-208, make a recommendation to the chief executive officer concerning the request to vacate or alter; and

(ii) the chief executive officer shall hold a public hearing in accordance with Section 10-9a-208 and determine whether good cause exists for the vacation or alteration.

(b) Subsection (1)(a)(i) does not apply if the chief executive officer has been designated as a land use authority.

(2) If the chief executive officer vacates or alters any portion of a street or alley, the chief executive officer shall ensure that the plat is recorded in the office of the recorder of the county in which the land is located.

(3) The action of the chief executive officer vacating or narrowing a street or alley that has been dedicated to public use shall operate to the extent to which it is vacated or narrowed, upon the effective date of the vacating plat, as a revocation of the acceptance thereof, and the relinquishment of the city's fee therein, but the right-of-way and easements therein, if any, of any lot owner and the franchise rights of any public utility may not be impaired thereby.